

REGULAR MONTHLY MEETING OF THE STEPHENS CITY TOWN COUNCIL
TUESDAY, May 5, 2009
7:30 p.m.

Mayor Ray Ewing called the meeting to order at 7:30 p.m. and led the Pledge of Allegiance.

Vice Mayor Shull gave the invocation.

Roll call showed the following present:

Vice Mayor Joy Shull, Council member Linden A. Fravel, Jr., Council member James Harter, Council member Joseph Hollis.

Absent: Council member Ron Bowers and Council member Michael Grim

Staff present: Mike Kehoe, Town Manager; Brian Henshaw, Town Planner; David Griffin, Town Attorney; Dianne MacMillan, Town Clerk; Charlie Bockey, Police Department

Press: J.R. Williams, Northern Virginia Daily

Guests: Ron Mislowsky and Patrick Sowers, Patton, Harris, Rust; Clay Athey, Attorney for applicant

AGENDA

Mayor Ewing asked that the Agenda be approved. Vice Mayor Shull moved to adopt the agenda and the motion passed.

PUBLIC COMMENTS

None

PUBLIC HEARINGS

A. Capital Improvements Plans

Brian Henshaw, Town Planner, explained the CIP with a power point presentation breaking down each category by percentage of total. He stated that the CIP was part of the Comprehensive Plan process covering a five-year period for projects needed in that five year period.

Mayor Ewing opened the public hearing and asked for comments or questions. There being none, the public hearing was closed.

B. Proposed Budget – Fiscal Year 2009-2010

Mr. Kehoe, Town Manager, presented the 2009-2010 proposed fiscal year budget and advised that it had been advertised twice and was on the town website. He stated that there would be no tax increase with all rates staying the same. He said that compared to the previous year the budget would have an overall 6% increase with additional revenues coming in anticipation of new connections for construction in the coming year. He added that the cigarette tax revenue had been a help with the general fund. Mr. Kehoe reviewed the general fund and utility fund with breakdowns. He noted that the biggest expense was public safety.

Mayor Ewing opened the public hearing and asked for comments or questions from the public. There being none, the public hearing was closed.

C. Official Town Zoning Map

Mr. Henshaw said that the process of updating the zoning map began months ago but had run into snags. He said the official zoning map would show only current zoning and not future zoning. He added that the zoning map in the Comprehensive Plan did not identify the historic district which is included in the update. He stated that it was simply a housekeeping matter because of a need for an update.

Mayor Ewing opened the public hearing and asked for comments or questions from the public. There being none, the public hearing was closed. By consensus the Town Council approved the revision of the official zoning map.

D. BHL Investment I LLC – Rezoning Request

Mr. Henshaw said the property was known as the Davis property and the application was to rezone it to Newtown Development District. He briefly described the number of residential and commercial units in the age restricted development. Mr. Ron Mislowsky, Patton Harris Rust & Assoc. presented the plan in detail. He reported that the main access road would be constructed to VDOT standards and the developer would comply with the Town's karst ordinance. He addressed earlier concerns regarding the appearance of the residential units with elevations views.

Mr. Mislowsky addressed the sewer availability to the property. He said that they met with Frederick County Sanitary Authority and discussed two alternatives for bringing sewer to the property – the existing pump station is at capacity so they discussed alternate routing for sewer service. He said that the proffer for each unit would be \$5000.00 and this would be paid either to FCSA or to the Town. If the Town extended the improvements to the site from the south through the town, the Town would be paid \$5000.00 plus any hook-up fees. Council member

Hollis stated that since the town did not have a dollar figure for construction from the south, he assumed the proffer would depend on that amount being approximately the same as the agreement with FCSA. Mr. Mislowsky said that if the extension from the south was more expensive, they would opt for the north connection with FCSA. Council member Fravel said that the proffer statement indicated that it would be payable on issuance of each town zoning permit and asked if that was an occupancy permit or the building permit. Mr. Henshaw said that each was tied to issuance of individual building permits. Council member Fravel then noted that the proffers would be paid piecemeal and that had not been his understanding. He stated that that would seem to indicate that the town would have to float the loan for the entire construction of the line to the development. Mr. Mislowsky said that they had been directed to the FCSA and the proffer originated from that discussion. Council member Fravel said it seemed that that would put the town in the position of having to subsidize the construction and become obligated to bring water and sewer to the entire property for only two units and maybe having to wait for several years for full build-out while carrying a three million dollar loan. The Town would be in the position of being reimbursed one building at a time. Mr. Mislowski said it was the town's option to bring the service from the south and if they chose not to, the developer could opt to use FCSA. Mr. Mislowsky continued explaining the advantage of age restricted development and said he hoped Council would take action.

Mayor Ewing opened the public hearing as asked for comments or questions. There being none, the public hearing was closed.

E. Newtown Village LLC/Glen Russell – Rezoning Request

The Town Planner, Brian Henshaw stated that this was also a request to rezone to the Newtown Development District zoning. He turned the presentation over to Patrick Sowers of PHR&Assoc and Mr. Clay Athey representing the applicants. Mr. Sowers reviewed the plan briefly and noted that there was a proffer added for construction of connecting streets which would be triggered by dedication of the proposed school site to Frederick County and other triggers. He further reviewed the proffer statement item by item and the final development plan in detail. Mr. Sowers stated that the rezoning would conform to the comprehensive plan, the annexation agreement and the joint land use plan.

Mr. Clay Athey stated that the Planning Commission had unanimously recommended approval of the rezoning request to Town Council. He noted that under the current land use map the property was allowed to have 130 to 150 single family homes constructed. He said that the current proposal made more sense. He added that they were not asking for final approval of the plan but just the rezoning and if it was agreed to change the current zoning to what the future land use map indicated it should be, it would be a positive impact on the Town.

Council member Fravel said that it was his understanding that the proffer for sewer was similar to the earlier rezoning request. Mr. Athey cited the study and showed the proffer statement. Council member Fravel said he thought all along that the sewer upgrades were going to be made and brought to the site by the developer. He said the Town would be paying more than three million because of the interest over 20 years while the town was still floating the bond. Mr.

Athey said talking to FCSA, an estimate was made to approve just a piece providing capacity to the Russell site only at a cost of \$6,000.00 or \$700,000. He said following the talk with FCSA, the original proposal included Stephens City making an investment for improvements inside and outside town but the Town declined because of monetary considerations. Mr. Athey said they returned to FCSA and proposed an agreement with FCSA issuing bonds and completing the project for \$5300 per unit. Council member Fravel said he understood the developer not wanting to pay more than what it would cost to go one way and they were not obligated to pay the higher cost. He said the fact would be that the Town would be floating the bond and paying the interest for an undetermined period of time. Mr. Athey said that was true if the lines came from the south but if it came from the north something could still be accomplished for Stephens City by increased capacity at the north of town. He added that the Town should consider the tap fees in the overall calculations.

Mayor Ewing said that Council now knew how they will be handling it and opened the public hearing for comments for or against the proposal

Larry McClauter, Valley Pike north of town, asked if he could hook into the sewer line if it went on the northern route. It was determined that he lives outside the town limits and would need to contact Frederick County Sanitation Authority for this information.

There being no further question or comment, the public hearing was closed.

MINUTES – April 7, 2009 Regular Meeting

Council member Harter moved for approval of the minutes of April 7, 2009 as presented and the motion carried by the following vote:

Recorded Vote:

Vice Mayor Shull	-	Aye
Council member Fravel	-	Aye
Council member Harter	-	Aye
Council member Hollis	-	Aye
Council member Bowers	-	Absent
Council member Grim	-	Absent

TREASURER'S REPORT

The Mayor asked for questions or comments in the matter of fund balances and there were none. The Treasurer's report was accepted as presented.

POLICE REPORT

Chief Bockey briefly outlined the activities of the Police Department for the last month. The Police report was accepted as presented.

ACTION AGENDA

A. Proposed Approval of Rezoning Request from BHL Investment LLC

Mayor Ewing said that there were some issues regarding the wording of the infrastructure proffers. He said in his opinion Council would be better served if staff would clarify the proffer statement and bring it back for further consideration before any action. He added that if it were not the same interpretation, wording might need to be changed. Council member Hollis asked how long Council wanted to drag out the process. Council member Fravel said it was an important project and deferred to legal counsel. Council member Hollis said the Council didn't even know if the southern line was a viable option. Mr. Kehoe said Stowe Engineering had run into some snags but the survey should be completed soon. Council member Hollis asked Council member Shull if she saw the southern extension as a viable alternative. Mrs. Shull said yes; it would benefit the town as an overall project. She added that there were no figures back yet but hoped it would be viable and less expensive than the northern option but it would be the best way for the town to go. Mr. Kehoe said he saw it as a major opportunity for the town to make major infrastructure improvements to the south and an immediate impact would be improvement of I&I.

Mr. Mislowsky said he could understand Council wanting to go back to staff for a rewording of the proffer statement. He stated that the developer could not finance the extension and would only pay on a by-unit basis and if the direction to staff was to go back and cramp the proffer to get more money from the developer it could not work. Council member Hollis stated that that was not the intention of Council. Mr. Athey stated that the proffer gave the Town sole authority to decide the direction of the sewer connection. Council member Fravel said he understood the per unit cost but if it took 10 to 15 years to begin building, Council would have obligated the people of the Town to subsidize the extension to the north end. He stated that it was always the intention that the ordinance call for any infrastructure to be in place before the first permit is pulled. He asked how long the town would continue to pay interest on such a loan. Mr. Athey said that the developer already had an agreement with FCSA to go north.

Council member Joy Shull said that if it was necessary in order to make improvements in the Town, Council should be willing to float a bond. She stated that the Town needed this agreement to improve the system and she did not think the Council could afford to pass up the opportunity.

Mayor Ewing called for a motion and noted that Planning Commission recommended approval.

Council member Fravel moved to table action until Council fully understood what it was getting. Council member Hollis agreed but added Council should put a maximum of 30 days on this rezoning action since it had been discussed since 2007. Council member Fravel reiterated that Council should not obligate the town's people to subsidize the development. Council member Shull noted that if the cost of going from the south was too expensive, Council should know within that time limit.

Council member Fravel amended the motion to state Council would table action on the rezoning request for 30 days, until June 2, 2009.

Recorded Vote:

Vice Mayor Shull	-	Aye
Council member Fravel	-	Aye
Council member Harter	-	Aye
Council member Hollis	-	Aye
Council member Bowers	-	Absent
Council member Grim	-	Absent

B. Proposed Approval of Rezoning Request from Newtown Village LLC/Glen Russell

Mayor Ewing asked for a motion regarding the rezoning of the Russell property.

Council member Harter moved that Council table action on the rezoning request for 30 days, until the June 2nd Council meeting.

Recorded Vote:

Vice Mayor Shull	-	Aye
Council member Fravel	-	Aye
Council member Harter	-	Aye
Council member Hollis	-	Aye
Council member Bowers	-	Absent
Council member Grim	-	Absent

COMMITTEE REPORTS

A. Finance Committee – Joseph Hollis, Chair

Council member Hollis reported that the Committee was in the process of review of RFPs for audit services and should have one more before making a decision.

PLANNER'S REPORT – Brian Henshaw

Dave Griffin said that referring to the zoning map; Council would need to set a public hearing to amend the ordinance for changes to the zoning map. Mr. Henshaw said Council could take action at the next meeting. Mr. Griffin said Council approved the concept but needed to amend the ordinance.

In addition to the planners report included in the packet, Mr. Henshaw advised that Valley Conservation Council will hold an awards ceremony for Better Models for Governments awards in Winchester. He said the Town has received one of these awards and he would be a presenter part of a symposium regarding what the town is working on with regard to Corridor Enhancement. He encouraged all members to attend.

TOWN MANAGER'S REPORT – Mike Kehoe

1. Mr. Kehoe said Allegheny power company was to begin trimming trees on main street but it had become a part of the Shenandoah Valley Coop and was not sure how that would affect tree trimming.
2. He said he was obtaining estimates for replacement of the metal pipe railing on main street south of the stop light damaged by accident and would take to the estimated to the public works committee for consideration.
3. He reported that the new architect for the most recent school project was in the process of drawing up specs for window repair and replacement and the project moving forward.
4. Mr. Kehoe announced that the Town had received a challenge from the Town of Middletown for the Fourth of July for a softball game and somebody needed to respond. Mayor Ewing said the Town Planner was the ball team captain and would recruit players for this. Mr. Henshaw said it was actually an event inviting all the local jurisdictions to play. Mr. Kehoe said he would like to try to have a representative from the town.
5. He said that building permits for small jobs such as decks and remodeling were picking up since the first of the year.
6. He added that real estate taxes should be going out next week followed by personal property taxes and there had been many residents coming in to purchase decals.
7. Mr. Kehoe said that the Newtown Heritage Festival was coming up fast - May 23 & 24 and the committee had started getting some donations from the community. He added that there would be fireworks this year and the committee could always use more volunteers.

COUNCIL COMMENTS/CALENDAR

There being no further business, Council member Hollis moved to adjourn at 9:05 p.m. and the motion carried.

Ray E. Ewing, Mayor Ray Ewing

Dianne L. MacMillan, CMC, Town Clerk

Brian said that it was the Davis property. He said the application was to rezone to newtown development district for zoning class 214 residential units. 160 will be 4 story condominium. 2 commercial office retail buildings toward front of the property on Rt 11. Ron Mislowski PHR presented the plan (Mr & Mrs Walker). Main access off Rt 11. 26.6 acres. 11.5 is already zoned R2. Developed on grid pattern. Details of the development including location of residential units and commercial units. Open space is open to the public with pedestrian access. Access to VDOT specifications recognize compliance with Karst ordinance. Addressed concern about the appearance of the residential units with elevation views. Infrastructure – utility – town could not provide adequate sewer facility through the town. Met with FCSA and have two alternatives existing pump station at capacity so worked with alternate routing for sewer. On site facilities would be responsible of developer as independently to be installed as the development warrants but the provision extension of the sewer to the site would be part of the agreement with FCSA and we also assume that the town for the 5000 per unit proffer plus the hook up fees if the improvements were brought from the south side through town and to the Davis and Russell and would do whatever was brought to the property line. 5000 per unit to FCSA or the town. Hollis as far as the 3.5 million dollars we have no dollar figure from the south so I would assume that the proffer would depend on that coming out at the same reasonable amount. Ron – well, we can pay for whatever the town wants to do if more expensive would opt for the north connection. Butch – proffer said it shall be payable on issuance of each town zoning permit – is this occupancy permit or building permit. Brian – tied to building permit first pay with building permit. Butch – so it would be piecemeal payment with each building permit. This was not my understanding. That would seem to indicate that the town would have to float the loan for the entire construction. Ron – originally we were directed to FCSA and proffer originated from this discussion. Butch – puts town in position of having to subsidize this and if we are obligated to bring water and sewer to for two units and have to wait 15 to 20 years for full buildout are carrying a loan. Ron – and it's to the town option whether to extend sewer to the site. Butch problem with floating the whole 3 million through the town and being reimbursed one building at a time. Ron – up to the town and if they don't want to do that we can go through FCSA. Ron continued with proffers for age restricted development. Hope you take action tonight. Mayor opened ph. closed

Second development

Brian rezone to newtown development district. 320 residential mixed used development. 25+ acres of industrial. Clay Athey presented application and Mr Sours. Patrick Sowers PHR noted that the

adjacent property to carry through both to benefit town as a whole. Currently zoned R1 and R2 approx 125 acres on north end phase 1 annexation are. Key portion containing the SC bypass passing through it. Reviewed the plan briefly – added proffer for construction of connecting roadway triggered by dedication to FC of school site. Existing stone wall as proffer will not be disturbed to maintain the existing corridor. Reviewed the proffer statement by item. Final development plan detail. Proposal that meets compl plan and annexation agreement and joint land use plan.

Athey – said PC recommended unanimously to TC. Under current land use map this property would be entitled to build 130 and 150 sf homes. Does proposal make more sense than what is in current land use plan. Not asking to approve final plan but just the rezoning. A conditional rezoning of the property - if agree to change current zoning to what future land use map says it should be with positive financial impact for the town.

Butch my understanding that the proffer for sewer is same. They don't ask for additional ability to offset to bring it to our site. Can offset some of the 5000 proffer if Davis property takes off. Butch all along I assumed that the sewer upgrades were going to be made and brought to the site by the developers. We are paying more than the 30 million because paying more because paying accumulated interest over 20 years. Butch – still floating the bond. They tap fees in addition to the proffers. Butch – still not sure who is paying for the project.

Ron – understand want to go back to staff for reworking. And tell developer cannot finance the extension of the sewer. Can only pay on a by unit basis. So if your direction to staff is to go back and cramp the proffer to get more money from the developer. Hollis – not out intention. They – also the proffer give the town the sole authority and you decide. Hollis – does that delay decision on rezoning. Butch – who will foot the bill for the extension. Paid per unit understand but if it takes 15 to 10 years to get building again have obligated the people of this town to subsidize the extension on the north end. Always that intention ordinance calls for that infrastructure has to be in place before the first permit is pulled. Now it seems like the onus is back on the town to make some agreement with the FSCA authority and then pay them back on a per unit basis. How long do we continually pay interest on this loan. Hollis understood that if go north FSCA will foot the bill. Clay says and or to give the town option to do it with three party deal or with the town to go south. Already have an agreement with FSCA to go north. Joy – if can receive money to improve infrastructure to get developer to go through – if necessary for us to get improvement should be willing to float a bond. Town can use and need this to improve our own system. Butch concerned about the timing of the loan. Joy don't think we can afford to pass up this opportunity.